IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LODGED

JAN 21 1966

WILLIAM E. WILSON, Clerk

RAYMOND R. BEASLEY,

Appellant,

v.

PETER J. PITCHESS, SHERIFF,
COUNTY OF LOS ANGELES, STATE
OF CALIFORNIA,

Appellees.

NO. 20237

APPELLEES BRIEF

EVELLE J. YOUNGER
District Attorney of Los Angeles
County, State of California

By

HARRY WOOD
Chief, Appellate Division

ROBERT J. LORD
Deputy District Attorney
Attorney for Appellees

VELLE J. YOUNGER
strict Attorney of Los Angeles County
00 Hall of Justice
os Angeles, California 90012

26-3888

torney for Appellees

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AYMOND R. BEASLEY, Appellant, v. ETER J. PITCHESS, SHERIFF, OUNTY OF LOS ANGELES, STATE F CALIFORNIA Appellees.	)	NO. 20237

APPELLEES BRIEF

INTRODUCTION

This Brief is filed on behalf of the Sheriff of the County f Los Angeles, State of California, and of The People of the State f California, as a Real Party in Interest by Evelle J. Younger, istrict Attorney of the County of Los Angeles, State of California.

We will first discuss whether Appellant's rights under the nited States Constitution have been infringed; then we will consider he basic facts and proceedings in the State Courts in order to show hat there was no lack of due process accorded the petitioner in hese courts either.

QUESTION PRESENTED

On November 15, 1962, the petitioner was indicted by the and Jury for selling marijuana on or about August 3, 1962 (Count I), d for selling heroin on or about August 8, 1962 (Count II). titioner was arraigned on these charges in the California Superior urt on August 28, 1964. Petitioner claims that this long delay s denied him the right to a speedy trial, which he claims is aranteed him by the United States Constitution.

It is our position that the United States Constitution otects a defendant from a denial of a speedy trial only insofar as e delay precludes a fair determination of the charges pending ainst the defendant. See <u>United States</u> v. <u>Fay</u> (2d Cir. 1963), 3 Fed. 2d 620, <u>cert. denied</u> 365 US 817, 5 Led. 2d 695, 81 S.Ct. 699; <u>lon</u> v. <u>Grieco</u> (D.N.J. 1964), 226 F. Supp. 414. As is indicated by ese cases in order for a defendant to rely upon the United States nstitution, he must claim and prove prejudice resulting from the lay in his trial. In the instant case, no prejudice is claimed, t alone proved, and consequently it is not necessary to consider e applicability to the United States Constitution since the instant se presents no federal question.

We also submit that the evidence in this case establishes od cause for the delay in the trial of petitioner's case.

GOOD CAUSE

While petitioner was represented by counsel on his motion dismiss for alleged lack of a speedy trial, the following evidence s adduced at hearings on the motion (references are to Reporter's anscript of proceedings in Los Angeles Superior Court):

William H. Slagle, a police officer for the City of s Angeles, checked the jail records of the Los Angeles County d City jails on November 14, 1964, (the day before the indictment) ascertain whether the petitioner was incarcerated in jail. On vember 17th, Officer Slagle telephoned several of the little towns rdering the city limits of Los Angeles to ascertain whether Beasley ght be a prisoner in one of these outlying areas. Slagle was unable locate Beasley by these means. (Rep. Tr. pp. 64-68.)

On November 15, 16 and 17, 1962, over 75 officers of the s Angeles Police Department were assigned the specific task of cating suspects wanted for narcotic violations who had been dicted by the Grand Jury. One of these suspects was the petitioner, ffidavit of Burt Cain, an officer assigned to the Los Angeles Police partment; although portions of Officer Cain's affidavit were ordered ricken by the trial court, other portions were admitted into evidenc ep. Tr. p. 78] and only those portions of Officer Cain's affidavit ich were admitted into evidence are relied on herein).

One of these 75 officers was Officer Slagle who went to e area of Adams and Normandie looking for petitioner. ep. Tr. p. 66.) During the three days of the round-up, Officer agle checked that area several times and thereafter checked it off d on. (Rep. Tr. p. 67.) During the course of the round-up, ficer Slagle looked for Beasley ten, fifteen or twenty times. ep. Tr. p. 68.)

Another officer who participated in searching for persons dicted by the Grand Jury during this round-up was Lee W. Moody. ep. Tr. pp. 70-71.) Officer Moody had seen petitioner on numerous

casions around the Adams and Normandie area and was aware that titioner had lived in the Cozy Island Motel, which is on the north-st corner, east of the service station at Normandie and Adams. ep. Tr. p. 71.) After learning that petitioner had been indicted the Grand Jury, Officer Moody went to the corner of Normandie and ams numerous times and checked the hot dog stand there. (Rep. Tr. 71.) He also went to the manager of the Cozy Island Motel during e round-up and checked with him. (Rep. Tr. pp. 71-72.) At the zy Island Motel, Officer Moody made inquiries as to a new address r petitioner, but was unable to obtain a new address. (Rep. Tr. 73.) He checked with numerous people on the street that he knew om frequenting that area. (Rep. Tr. pp. 71-72.) No one knew of titioner's whereabouts. (Rep. Tr. p. 72.)

Officer Moody went to an address on 33rd Street and checked r petitioner there but discovered that petitioner was not there. ep. Tr. p. 73.) At that address he talked to some woman who lived ere and stated that petitioner had gone and that she did not know ere petitioner went. (Rep. Tr. p. 73.) Officer Moody believes he ecked with this woman on a Sunday night and she told him that titioner had left on a Thursday night or early Friday morning, but at she did not know where he had gone. (Rep. Tr. pp. 73-74.)

Percy H. Thompson is the police officer who testified before e Grand Jury in regard to the case now pending against petitioner. ep. Tr. p. 75.) After learning that petitioner had been indicted, ficer Thompson went to the address which he knew as petitioner's sidence and talked with a female there who stated that petitioner d left hurriedly for an undisclosed location. The address that

icer Thompson checked was 339 East 33rd Street. Officer Thompson e this check on either November 20th or 21st, 1962. On two other asions Officer Thompson looked for petitioner in the vicinity of nandie and Adams but was unable to locate petitioner. This was er November of 1962. (Rep. Tr. pp. 76-78.)

On November 17, 1962, an all-points bulletin was dispatched the Los Angeles Police Department teletype listing the name of itioner and his description as an outstanding narcotic sale sus- t. This teletype is received by virtually all law enforcement ncies in the State of California, and should petitioner be placed er arrest by any law enforcement agency within this state, a munication of this fact would be sent to the Los Angeles Police artment. (Affidavit of Burt Cain.)

The evidence indicates that the first time an officer from Los Angeles Police Department became aware of the whereabouts of itioner after his indictment was on or about August 15, 1964, when eletype was received from San Francisco indicating that petitioner in their custody. (Affidavit of Burt Cain.)

Petitioner was arrested in San Francisco on or about ruary 19, 1964, at which time petitioner had no identification on at all and used the name of Raymond Sweetwyne. (Rep. Tr. p. 28.) itioner was booked under this name and gave no middle initial. p. Tr. pp. 28-29.) The arresting officer never knew petitioner er any other name than Sweetwyne until he received a subpoena to tify in November, 1964. (Rep. Tr. p. 31.) At the time petitioner, as Sweetwyne, was arrested, the arresting officer checked him out ough the Central Warrant Bureau in San Francisco under the name Raymond Sweetwyne. (Rep. Tr. p. 32.)

Petitioner testified that all of his friends knew him by name Raymond Beasley. (Rep. Tr. p. 46.) Petitioner worked and paid under the name Raymond Beasley. (Rep. Tr. pp. 47, 57.)

Petitioner's professional name in athletics was Raymond R. sley. (Rep. Tr. p. 51.) There is no question in petitioner's d that his name is Raymond Beasley and that is the name on his ntification from the Merchant Marines. (Rep. Tr. pp. 57-58.) ever, when he was arrested he used the name Sweetwyne even though did not use that name often. (Rep. Tr. p. 47.) Sweetwyne is a ily name. (Rep. Tr. p. 47.) Petitioner, according to his timony, used the name Raymond Sweetwyne when he was arrested ause he was "provoked by the officer." (Rep. Tr. p. 58.) At the e petitioner was brought down to the station and booked and his gerprints were taken and he signed the name Raymond Sweetwyne, he so because he was "still provoked with the officer." (Rep. Tr. 58.)

Just prior to leaving Los Angeles, petitioner lived at an ress which he does not know, but the address 339 East 33rd Street gs a bell with petitioner. (Rep. Tr. p. 53.)

THE FACTS PRESENTED ESTABLISH GOOD CAUSE

We submit the facts as above outlined presented to the ifornia Superior Court establish good cause for the delay in nging petitioner to trial. We submit that the police did all t was reasonably possible in an effort to locate the petitioner, ely, they went to those places which petitioner was known to quent in Los Angeles and they then put out an all-points bulletin

all other law enforcement agencies in the state regarding the
rant outstanding petitioner when they were unable to find
itioner in Los Angeles and vicinity. It is true that petitioner
nd himself in the clutches of the law in February, 1964, and
arently the San Francisco law enforcement agency did not dis-
er the fact that the person whom they had arrested was the same
son who was wanted by the Los Angeles Police Department. Of
rse, petitioner attempts to explain away the fact that he was
oubtedly responsible in great part for this oversight due to
use of a "family name," which name was one that he did not
ally use nor was it a name that was used among his acquaintances,
on the various jobs he held. Petitioner's sole explanation for
use of this name is that he was "provoked" into using it. We
mit that the court below had every right to reasonably conclude
t such an explanation was false, and that petitioner became a
itive from justice when he left Los Angeles, and desired to cover
his true identity in order to evade any possible trouble he had
ten into in Los Angeles. We submit that it is quite reasonable
conclude that petitioner somehow became aware of the narcotic
nd-up that took place, and fled Los Angeles since he had sold
rcotics to an undercover police officer, and that he kept his true
ntity from the San Francisco police to avoid criminal responsibility
r crimes he committed while in Los Angeles.

CONCLUSION

We submit that even if petitioner was justifiably "provoked" o using a family name, as he claims, the law should not be rovoked" into granting him immunity for the criminal conduct eged against him. He only faces a fair trial in a fair forum. appeal should be denied.

Respectfully submitted,

EVELLE J. YOUNGER
District Attorney of Los Angeles
County, State of California

By

HARRY WOOD
Chief, Appellate Division

ROBERT J. LORD
Deputy District Attorney

CERTIFICATE

I certify that in accordance with the preparation of this ef, I have examined Rules 18 and 19 of the United States Court of eals for the Ninth Circuit and that, in my opinion, the foregoing ef is in substantial compliance with those rules.

EVELLE J. YOUNGER
District Attorney of Los Angeles
County, State of California

By

ROBERT J. LORD
Attorney for Appellees